IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5143 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5143 of 2002

MS BANNA DATTA for MR AR SHAIKH for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/06/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Surat City dated 18.12.2001 and executed on the next day i.e. on

19.12.2001, in exercise of powers vested in him by sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The subjective satisfaction recorded by the detaining authority is based on the papers submitted by the sponsoring authority stating that the detenu is found involved in four different criminal offences punishable under sec. 379 of IPC. The first offence registered is dated 15.2.99 and the last one is of dated 4.10.2001. The petitioner is under trial in the last two offence registered on 3.10.2001 and 4.10.2001. It seems that he was in habit of lifting the Hero Honda motor-cycle.

Submission of the learned counsel appearing for the petitioner Ms. Banna Datta is that the detaining authority has passed the order without proper application of mind otherwise this is not a case, even the allegation is accepted for the sake of argument, which can be said to be a case affecting the public order. The act of committing the criminal offences punishable under sec. 379 of IPC can be said to be a wrong affecting the law and order and not a public order. Placing reliance on the decision of the Apex Court reported in 1995(2) GLR p. 1268 in the case of Mustakmiya Jabbarmiya Shaikh vs. Commissioner of Police and two other decisions of this report, it is submitted that the ratio propounded by this three decisions would squarely applies to the facts of this case.

Mr. HH Patel learned AGP has submitted that the ratio of the decision in the case of Premsing @ Pallu Jesing Rajput vs. State of Gujarat & Ors., reported in 1999(1) GLH P. 648 helps the respondents and the detaining authority because the detenu is found involved in similar type of offences on more than one occasions.

This court has considered all similar submissions advanced while adjudicating Special Civil Application No. 4493 of 2002 and has held that the order detaining the accused found involved in such type of theft cases cannot be said to be a dangerous person concerned with the public order.

For this very reasons and the earlier decisions, this petition shall have to be allowed for the same reasons.

In the result, this petition is allowed. The impugned order of detention dated 18.12.2001 passed by

Police Commissioner, Surat City, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

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